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## FISCAL IMPACT REPORT

**SPONSOR** Tsosie                      **DATE TYPED** 2/15/2005      **HB** \_\_\_\_\_

**SHORT TITLE** Clarify Safe Haven for Infants Act                      **SB** 225/aSPAC

**ANALYST** Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Children Youth and Families Department (CYFD)
- Department of Indian Affairs (DIA)
- New Mexico Department of Corrections (NMDC)
- Administrative Office of the Courts (AOC)
- NM Attorney General's Office (AG)

### SUMMARY

#### Synopsis of SPAC Amendment

Senate Public Affairs Committee Amendment of Senate Bill 225 includes language that when a child is taken into custody by CYFD and after reasonable efforts have been made to determine whether the infant is an Indian child, the child's tribe shall be notified as required by the NM Children's Code and the federal Indian Child Welfare Act.

#### Synopsis of Bill

Senate Bill 225 addresses potential conflicts between the Safe Haven Act as written, the Indian Child Welfare Act, and the constitutional rights of parents.

### Significant Issues

The Safe Haven Act is intended to shield parents from criminal prosecution when they choose to leave infants at hospitals, and thereby to provide a safe alternative for parents unable to care for newborn children. It was never the intent of the Act to shield parents from the requirements of civil proceedings which are legally required to free the child for adoption. Among those legal requirements are notice to both parents (not just the one who left the infant), so that both parents can receive due process in adoption proceedings, and notice to the Indian Tribe (if the infant is an Indian child), so that the placement and other requirements of the federal Indian Child Welfare Act can be complied with.

Some hospitals have interpreted the Act as currently written as requiring them to shield the identities of mothers who leave children at hospitals, and of the father and possible Indian heritage of the infant, when the hospital has that information but the mother says she does not want the father or the child's tribe to know about the birth. This interpretation conflicts with the rights of the biological father and the child's tribe to be party to custody and adoption decisions. The proposed amendment would provide for disclosure by the hospital to CYFD all information the hospital obtains from the mother leaving the infant, including information about the father and about the infant's possible Indian heritage.

SB 225, according to DIA, would make the definition of "Indian child" consistent with the federal Indian Child Welfare Act of 1978 (ICWA). The current statutory definition is narrower than the definition in ICWA. Broadening the definition would provide tribes an increased ability to actively participate in the proper placement of the infant.

In addition the AG points out that the bill modifies the procedure to be followed if a parent seeks reunification with the infant. The bill amends §24-22-7 to provide that a parent shall have standing to participate in all abuse and neglect proceedings regarding the child, but the bill also eliminates subsection (B) providing that there shall be no presumption of abuse and neglect against a parent seeking reunification, if done so within 30 days of leaving the child at the hospital.

### **FISCAL IMPLICATIONS**

AOC states that there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions.

### **ADMINISTRATIVE IMPLICATIONS**

It is often difficult or impossible to determine a child's ethnic background after CYFD takes custody through a safe haven hospital, when parent identification and contact information is not made available. The amendment would allow CYFD to comply with its administrative and legal obligations under the Indian Child Welfare Act and the Children's Code, which elsewhere requires compliance with that Act. The amendment would also expedite adoption permanency for certain children by clarifying the child's ethnicity and tribal affiliation in advance of adoption proceedings.

## TECHNICAL ISSUES

AOC indicates the current language §24-22-3(B) states that a hospital “may” ask a person leaving an infant for the name of the parents and the infant’s medical history. The bill in §24-25-4(E) NMSA 1978 states that the hospital “shall” provide all available information regarding the child and parents, including identity, location of the parents, and child’s medical records. These two sections may conflict.

## OTHER SUBSTANTIVE ISSUES

The AG office states that Section 32A-4-22(I) of the New Mexico Children's Code requires that, whenever a child is placed in CYFD's custody, CYFD must investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, must pursue enrollment on the child's behalf. The Act itself also requires CYFD to make reasonable efforts to determine whether the infant is an Indian child. *See* NMSA 1978, §24-22-5(C) (2004 Supp.). SB 225 adds language that would require a hospital to inquire about whether the infant has a parent who is either a tribal member or eligible for membership in an Indian tribe. This, coupled with new language under the bill requiring hospitals to provide CYFD with all available information regarding both the child and the parents, might afford another opportunity for CYFD to identify Indian child(ren) left under the Act’s provisions.

BD/lg:sb:yr